Supreme Court, U.S.
FILED
JUL 29 2005
OFFICE OF THE CLERK

No. 04-1236

In The Supreme Court of the United States

TONY GOODMAN,

Petitioner

v.

STATE OF GEORGIA, *et al.*

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF FOR PETITIONER GOODMAN

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QUESTION PRESENTED

Whether, and to what extent, Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, validly abrogates state sovereign immunity for suits by inmates with disabilities challenging discrimination by state-operated prisons.

PARTIES TO THE PROCEEDING

Petitioner Tony Goodman brought this civil action against the State of Georgia and the Georgia Department of Corrections, as well as J. Wayne Garner, A.G. Thomas, Johnny Sikes, J. Brady, O.T. Ray, H. Whimbly, Margaret Patterson, and R. King. The individual named defendants were sued in their personal and official capacities.

All the defendants participated as appellees in the United States Court of Appeals for the Eleventh Circuit. The United States intervened in the court of appeals, pursuant to 28 U.S.C. § 2403(a), to defend the constitutionality of the statute.

The United States and each of the defendants listed above are respondents in this Court pursuant to this Court's Rule 12.6, but the question presented herein has no application to the individual defendants sued in their personal capacities.

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OPINIONS BELOW

The opinion of the Eleventh Circuit (Pet. App. 1a-23a) is unreported. The district court's opinion granting summary judgment to the State on sovereign immunity grounds (Pet. App. 24a-28a) is also unreported.

JURISDICTION

The court of appeals entered its judgment on September 16, 2004, and denied a petition for rehearing *en banc* on December 9, 2004. Pet. App. 29a-30a. The petition for *certiorari* was filed on March 9, 2005, within 90 days of the latter date. This Court granted the petition on May 16, 2005. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant provisions of the Eighth, Eleventh and Fourteenth Amendments to the United States Constitution, and of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, are set forth in the appendix to the petition for *certiorari*. Pet. App. 31a-36a.

STATEMENT

A. Factual Background[1]

This case involves the State of Georgia's treatment of petitioner Tony Goodman at the Georgia State Prison

[1] Because the district court entered summary judgment for the respondents on petitioner Goodman's claim under the Americans with Disabilities Act (Pet. App. 24a-27a), the material facts discussed in the text are drawn from the affidavits, declarations, and other documentary evidence submitted by the parties in the district court with "all justifiable inferences" drawn in favor of Goodman. *See Groh v. Ramirez*, 540 U.S. 551, 563 (2004) (internal quotation marks omitted).

(GSP) in Reidsville, Georgia, during Goodman's incarceration in that prison from 1996 to 1999, and from 2004 to the present. Pet. App. 2a, 20a. Goodman has had paraplegia since a 1992 automobile accident that injured his spinal cord; he uses a wheelchair to move about. J.A. 64-65 ¶¶15-16, 88 ¶12, 107 ¶2; *see id.* at 100 (Georgia Department of Corrections Medical Clinic form) (diagnosing Goodman as "paraplegic").[2]

The State has confined Goodman to a 12-foot by 3-foot cell for twenty-three to twenty-four hours each day because of the inaccessibility of other facilities in GSP. J.A. 64 ¶11, 67 ¶1, 71 ¶8, 106. The cell is too narrow to permit him to turn his wheelchair around. J.A. 60 ¶4, 71 ¶8. And because the bed in his cell is inaccessible, Goodman is often forced to sleep in his wheelchair or risk injury in transferring to his bed. J.A. 60 ¶3, 88 ¶7, 103 ¶14, 108 ¶5.

The State has not provided Goodman with accessible sanitary facilities. He has on a number of occasions experienced significant injuries (including broken bones) when he attempted to transfer from his wheelchair to the toilet in his cell. J.A. 59 (broke his left foot and crushed his left knee on May 14, 1999, trying to transfer to the toilet), 108-109 ¶¶6-8 (injured right knee on August 26, 1998), 103 ¶18 (injured his right leg and neck on July 1, 1998), 88 ¶7 (identifying dates in 1996 and 1997 where Goodman was injured trying to transfer from his wheelchair);

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[2] In their brief in opposition to the petition for *certiorari*, respondents attempted to cast doubt on petitioner's disability by referring to the events underlying his criminal conviction. Br. in Opp. 3 n.2. But petitioner's allegations of the substantial limitations in his ability to walk are supported not only by prison medical records and sworn affidavits discussed in the text, but also by respondents' own pleadings in the district court. *See* J.A. 96 ¶4 (Respondents' Statement of Material Facts) (explaining that petitioner was assigned to his housing unit because of "the special requirements associated with his being wheel chair bound").

see also id. at 63-64 ¶10 (bathrooms at prison library and church, as well as other areas of prison, do not comply with ADA standards). On other occasions, when Goodman was unable to reach the toilet, he was "required to live and sit in [his] own feces and other body waste" and was denied cleaning supplies and assistance in cleaning his wheelchair and cell. J.A. 65 ¶17; *see id.* at 59 (describing May 14, 1999 incident), 103 ¶16 (describing October 5, 1998 incident). In fact, Goodman was punished for not cleaning up the waste in his cell – the State confiscated his legal materials as a sanction. J.A. 59. Prison guards have repeatedly denied Goodman's requests that they assist him in transferring from his wheelchair to the toilet or bed. J.A. 103 ¶15, 108 ¶5.

Goodman was unable to take a shower "for more than two (2) years," because GSP's showers are inaccessible to wheelchair users. J.A. 60 ¶4, 67 ¶2. He has fallen and injured himself on multiple occasions when attempting to transfer from his wheelchair to a jury-rigged seat in the shower stall. J.A. 109 ¶9 (describing April 8, 1999 incident), 88 ¶7 (identifying dates in 1996 and 1997 where Goodman was injured trying to transfer from his wheelchair).

The inaccessibility of GSP's facilities has left Goodman without access to virtually any prison services, programs, and activities to which "other similar security [level] inmates have access." J.A. 65 ¶18. Goodman has been denied physical therapy services. J.A. 64-65 ¶15, 99 ¶10; *see id.* at 91 (letter from staff physician at GSP stating "PT is not available here"). He has also been denied access to the prison law library and "congregate religious services" that are "available to inmates who do not have disabilities." J.A. 105; *see also id.* at 98-99 ¶3, 108 ¶3, 65 ¶18 (denied "religious rights" to which "other similar security [level] inmates have access").

Numerous GSP officials, from the Warden and Deputy Warden to the line staff at the prison, are aware of these

problems and have done nothing to stop or solve them. J.A. 60, 98 ¶1. Moreover, prison staff ignored Goodman's repeated requests for medical care, J.A. 98 ¶1, refused to provide Goodman the treatment and medication prescribed by doctors, J.A. 101 ¶2, 103 ¶12, 109 ¶10, and refused to provide parts for or repair his wheelchair when it was broken, J.A. 88 ¶8.

B. Proceedings Below

1. In 1999, Goodman filed this suit *pro se* in the United States District Court for the Southern District of Georgia, against respondents the State of Georgia, the Georgia Department of Corrections, and a number of Georgia prison officials. Pet. App. at 3a, 20a. Goodman asserted two basic claims. First, invoking 42 U.S.C. § 1983, he alleged that respondents had violated his Eighth Amendment right to be free of cruel and unusual punishment. Pet. App. 3a. Second, he alleged that they had violated Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131 *et seq.*, which prohibits States from discriminating against individuals with disabilities. Pet. App. 3a. Goodman sought monetary damages on both claims and injunctive relief on the ADA claim. *Ibid.*

Pursuant to a provision of the Prison Litigation Reform Act (PLRA) that imposes mandatory screening duties on district courts in prison cases, *see* 28 U.S.C. § 1915A, the district court, *sua sponte*, dismissed Goodman's Section 1983 claims against all respondents for failure to state a claim. Pet. App. 9a-10a. But the district court concluded that the complaint "arguably stated a colorable claim for relief" under Title II and permitted the ADA claim to proceed against the State of Georgia and the Georgia Department of Corrections. Pet. App. 10a.

The parties subsequently filed cross-motions for summary judgment on the ADA claim. Determining that there was a genuine issue of material fact regarding the

respondents' compliance with the ADA, the district court denied the motions. J.A. 22, 25. The district court also concluded that a disputed issue of material fact existed regarding whether Goodman was physically injured when he tried to transfer himself from his wheelchair to the toilet. J.A. 24. As a result, the applicability of the PLRA's prohibition on an inmate's recovery of damages for mental or emotional injury in the absence of a "physical injury," 42 U.S.C. § 1997e(e), could not be resolved on summary judgment. J.A. 24.

In October 2001, following this Court's decision in *Board of Trustees v. Garrett*, 531 U.S. 356 (2001), which held that Title I of the ADA (which bars disability-based discrimination in employment) could not validly abrogate state sovereign immunity, respondents filed a renewed motion for summary judgment. Pet. App. 12a. They contended that the Eleventh Amendment barred Goodman's claims insofar as he sought damages against the State and that Goodman's claim for injunctive relief had been rendered moot when he was transferred out of GSP in 1999. *Ibid.* The district court agreed and granted the motion. Pet. App. 24a-27a.

2. The Eleventh Circuit affirmed the district court's dismissal of the Title II claims against the State, but it reversed the district court on other grounds and permitted the Section 1983 claim and the Title II injunctive claim against the state officials to proceed. On the Section 1983 claim, the court of appeals held that Goodman's complaint stated a claim for a violation of the Eighth Amendment in three respects. First, by confining him to a cell in which he could not move his wheelchair, the individual respondents effectively imposed "some form of total restraint twenty-three to twenty-four hours-a-day without penal justification," in violation of the principles articulated in *Hope v. Pelzer*, 536 U.S. 730, 738 (2002). Pet. App. 18a. Second, by forcing Goodman "to sit in his own bodily waste because

prison officials refused to provide assistance," the individual respondents violated the principles articulated in a long line of Eighth Amendment cases that have "accord[ed] particular weight to exposure to human waste." Pet. App. 18a & n.10 (citing *McBride v. Deer*, 240 F.3d 1287, 1292 (10th Cir. 2001); *McCord v. Maggio*, 927 F.2d 844, 848 (5th Cir. 1991); *Fruit v. Norris*, 905 F.2d 1147, 1151 (8th Cir. 1990); *Johnson v. Pelker*, 891 F.2d 136, 139 (7th Cir. 1989); *La Reau v. MacDougall*, 473 F.2d 974, 978 (2d Cir. 1972), *cert. denied*, 414 U.S. 878 (1973)). Third, by "knowingly providing no physical therapy and inadequate medical treatment," by their "systematic denial of access to virtually all prison programs and activities because of [Goodman's] disability," and by providing "woefully inadequate and inhumane prison facilities for the disabled, such as toilets without the necessary support or handrails," the individual respondents showed "deliberate indifference" to Goodman's "serious medical condition." Pet. App. 18a-19a; *see Estelle v. Gamble*, 429 U.S. 97, 104-105 (1976).

On the ADA claim, the court of appeals sought additional briefing from the parties (including the United States, which intervened to defend the constitutionality of the statute) following this Court's decision in *Tennessee v. Lane*, 541 U.S. 509 (2004). Subsequent to that briefing, the court of appeals agreed with the district court that Goodman's claims against Georgia and the Georgia Department of Corrections were barred by the Eleventh Amendment. Pet. App. 19a.[3] The court of appeals relied (Pet. App. 19a) on its decision in *Miller v. King*, 384 F.3d 1248 (11th Cir.

[3] The court of appeals held that Goodman's claims for injunctive relief against state officials in their official capacities could proceed under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), and it reversed the district court's conclusion that Goodman's transfer out of GSP mooted the request for injunctive relief; Goodman had been transferred back to GSP while the appeal was pending. *See* Pet. App. 20a-21a.

2004), a case argued on the same day as Goodman's, in which the same three-judge panel had ruled that "Title II of the ADA, as applied in the Eighth-Amendment context to state prisons, fails to meet the requirement of proportionality and congruence" used to assess the validity of Fourteenth Amendment legislation. *Id.* at 1273, 1275 (citing *City of Boerne v. Flores*, 521 U.S. 507, 533 (1997)). Title II's abrogation of state sovereign immunity was thus not a valid exercise of Congress's enforcement authority under Section 5 of the Fourteenth Amendment in the view of the court of appeals – even in a case like *Miller* and the present case, where the plaintiff stated a claim that the conditions challenged under Title II also violated his constitutional rights. *See id.* at 1276 n.34.

SUMMARY OF ARGUMENT

I. As applied to discrimination against state inmates, Title II of the Americans with Disabilities Act is a congruent and proportional response to actual and threatened constitutional violations and therefore validly abrogates state sovereign immunity under Section 5 of the Fourteenth Amendment. *See City of Boerne v. Flores*, 521 U.S. 507, 518 (1997). This case is strikingly similar to *Tennessee v. Lane*, 541 U.S. 509 (2004), in which the Court upheld Title II as proper Section 5 legislation in the access-to-courts context. Indeed, the argument for upholding Title II is even stronger in the prison context. Each of the three factors this Court considered in *Lane* weighs heavily in favor of concluding that the statute is proper Section 5 legislation here.

First, in the prison context, as in the access-to-courts context, Title II enforces not only the Fourteenth Amendment's "prohibition on irrational disability discrimination" but also "other basic constitutional guarantees, infringements of which are subject to more searching judicial review" than rational-basis review. *Id.* at 522-523. As in

the access-to-courts context, the Constitution imposes on States "a number of affirmative obligations," *id.* at 532, in the prison context. This Court has repeatedly held that affirmative constitutional obligations arise from the State's total domination of an inmate's life. Prisons are places in which "the government exerts a degree of control unparalleled in civilian society," and inmates are "dependent on the government's permission and accommodation" to satisfy virtually all of their basic human needs. *Cutter v. Wilkinson*, 125 S. Ct. 2113, 2121-2122 (2005). As a consequence, the Eighth Amendment's prohibition against Cruel and Unusual Punishments, the Fourteenth Amendment's Due Process Clause, and other Bill of Rights guarantees all require that the State provide reasonable accommodations for inmates' disabilities in some circumstances.

Second, even more than in the access-to-courts context, Title II responds to a history "of pervasive unequal treatment in the administration of state services and programs, including systematic deprivations of fundamental rights." *Lane*, 541 U.S. at 524. *Lane* itself specifically recognized that the States' "pattern of unequal treatment" of individuals with disabilities extended to "the penal system." *Id.* at 525 & n.11. And the evidence before Congress during the two decades that it studied the problem demonstrated that state violations of the constitutional rights of inmates with disabilities were widespread. Far more than in *Lane*, a massive body of lower-court cases finding constitutional violations in this context provides "confirming judicial documentation," *Board of Trustees v. Garrett*, 531 U.S. 356, 376 (2001) (Kennedy, J., concurring), of that conclusion. Earlier statutes – including the Rehabilitation Act of 1973 and the Civil Rights of Institutionalized Persons Act of 1980 – failed to solve the problem of widespread violations of disabled inmates' constitutional rights. Because Congress "confronted a 'difficult and intractable proble[m],' where previous legislative attempts had failed," *Nevada Dep't of Human Resources v. Hibbs*,

538 U.S. 721, 737 (2003) (alteration in original) (citation omitted), Congress was within its constitutional authority to adopt "added prophylactic measures" to address the problem, *id.* at 731.

Third, as in the access-to-courts context, Title II is an "appropriate response" to this history and pattern of unequal treatment. *Lane*, 541 U.S. at 530. The statute targets conduct that has "a significant likelihood of being unconstitutional." *City of Boerne*, 521 U.S. at 532. Congress also carefully limited its intrusion into legitimate state prerogatives. The statute extends only to individuals with a "disability," *see* 42 U.S.C. §§ 12102(2), 12132, and inmates who satisfy that term's statutory definition are particularly likely to have "serious medical needs" that require accommodation under the Eighth Amendment and other constitutional provisions. *See, e.g.*, *Estelle v. Gamble*, 429 U.S. 97, 104-105 (1976). The statute's requirement of "reasonable modifications," 42 U.S.C. § 12131, takes account of the unique state interests in the prison context and further directs the statute at state conduct that is likely to be unconstitutional. And the limitations this Court has identified in Title II's damages remedy, as well as significant limitations imposed by the Prison Litigation Reform Act, also "tend to ensure Congress' means are proportionate to ends legitimate under § 5." *Hibbs*, 538 U.S. at 739 (internal quotation marks omitted). In light of the powerful record of state violations of the constitutional rights of inmates with disabilities, the same conclusion that the Court reached in the access-to-courts context is warranted here: Title II is "a reasonable prophylactic measure, reasonably targeted to a legitimate end." *Lane*, 541 U.S. at 533.

II. Even if this Court were not to agree that Title II is valid prophylactic Section 5 legislation in the prison context, the judgment of the court of appeals must nonetheless be reversed. The court of appeals concluded that

the same allegations that underlie Goodman's Title II claim also state a claim for a violation of the Eighth Amendment's Cruel and Unusual Punishments Clause. As applied to the facts of this case, then, the statute does nothing more than provide a remedy for an actual violation of Goodman's constitutional rights.

In *Lane*, 541 U.S. at 531 & n.19, this Court reaffirmed the principle that a statute must be upheld if Congress had the power to reach the fact setting addressed by the plaintiff's complaint – even if other applications of the statute might exceed Congress's power. The Court relied on *United States v. Raines*, 362 U.S. 17 (1960), which held that a statute challenged as exceeding Congress's Fifteenth Amendment enforcement power should be upheld "if the complaint here called for an application of the statute clearly constitutional." *Id.* at 24-25 (quoted in *Lane*, 541 U.S. at 531 n.19); *see also Griffin v. Breckenridge*, 403 U.S. 88, 104 (1966). This case is in the same posture as that of *Lane*, *Raines*, and *Griffin*. Whatever the outer boundaries of Title II's constitutionally permissible sweep may be, Congress plainly had Section 5 power to apply the statute here, where the State's conduct violated not just Title II but also the Constitution itself. *See City of Boerne*, 521 U.S. at 519-520 (Congress has power to provide remedies for actual constitutional violations).

ARGUMENT

There is no doubt that Congress intended to abrogate state sovereign immunity against suits asserting that a State violated Title II of the ADA. *See* 42 U.S.C. § 12202; *Tennessee v. Lane*, 541 U.S. 509, 518 (2004) (Section 12202 unequivocally expresses Congress's intent to abrogate state sovereign immunity against Title II suits). Nor is there any dispute that "Title II of the ADA unambiguously extends to state prison inmates." *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206, 213 (1998). This case presents only

the question whether Congress had the power to effectuate its abrogation.

This Court has repeatedly held that Congress may abrogate state sovereign immunity when it enacts legislation pursuant to Section 5 of the Fourteenth Amendment. *See Lane*, 541 U.S. at 518; *Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976). Congress specifically invoked its Section 5 power when it enacted the ADA. *See* 42 U.S.C. § 12101(b)(4) (invoking "the sweep of congressional authority, including the power to enforce the fourteenth amendment").

For the reasons described by the United States in *Lane*, Title II in all of its applications is a valid exercise of that power and petitioner Goodman urges reversal of the court of appeals' judgment on that ground. *See* Brief for the United States, *Tennessee v. Lane*, No. 02-1667. As in *Lane*, however, this Court can decide the case on a narrower ground. *See Lane*, 541 U.S. at 530-531. Title II readily qualifies as valid Section 5 legislation as applied to state discrimination against inmates with disabilities in the administration of the penal system.

I. TITLE II IS VALID SECTION 5 LEGISLATION AS APPLIED TO STATE DISCRIMINATION AGAINST INMATES WITH DISABILITIES

In *City of Boerne v. Flores*, 521 U.S. 507, 518 (1997), this Court recognized that Section 5 authorizes Congress to adopt "[l]egislation which deters or remedies constitutional violations." The Court further held that valid Section 5 legislation may be prophylactic – it may "prohibit[] conduct which is not itself unconstitutional" – but "[t]here must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *Id.* at 518, 520. Applying that test, this Court held in *Lane* that, at least insofar "as it applies to the class of cases implicating the accessibility of judicial

services," Title II "unquestionably is valid § 5 legislation." *Lane*, 541 U.S. at 531.

The same conclusion is warranted in the class of cases implicating the accessibility of prisons and discrimination against inmates with disabilities. Indeed, the argument for upholding Title II is even stronger in the context of incarceration. Prisons are places in which the State has near-total control over all aspects of an inmate's life on a twenty-four hour basis, including the very means for his existence through food and water, sanitation, and physical safety. The Constitution consequently imposes affirmative obligations on the jailer, including obligations to provide reasonable accommodations to inmates with disabilities. *Cf. Lane*, 541 U.S. at 532 (relying on similar "affirmative obligations" that the Constitution imposes on States in the access-to-courts context). States, however, have a long history of violating those constitutional requirements – a history that, more than in *Lane* or any other post-*Boerne* case, has been extensively documented by the federal courts. As the following sections demonstrate, Congress's enactment of Title II responded in a congruent and proportional manner to that intractable problem.

A. Title II Enforces Basic Constitutional Rights Retained By Inmates With Disabilities

The "first step" of the congruence and proportionality inquiry is "to identify the constitutional right or rights that Congress sought to enforce when it enacted Title II." *Lane*, 541 U.S. at 522. Title II prohibits States from discriminating against individuals with disabilities. 42 U.S.C. § 12132. As part of that prohibition, the statute requires States to make "reasonable modifications" to rules, policies, or practices, to remove "architectural, communications, or transportation barriers," and to provide "auxiliary aids and services" where those responses are necessary to avoid disability-based discrimination. *Id.* § 12131(2); *see also* 28

C.F.R. § 35.130(b)(7) ("A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.").

As the Court held in *Lane*, Title II enforces a number of constitutional rights. Those rights include the Equal Protection Clause's "prohibition on irrational disability discrimination," *Lane*, 541 U.S. at 522; *see City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 450 (1985), as well as "a variety of other basic constitutional guarantees, infringements of which are subject to more searching judicial review." *Lane*, 541 U.S. at 522-523.

Attempting to distinguish *Lane*, however, the court of appeals held that the Constitution imposes only "markedly narrow" and "negative" duties on States in the prison context. *Miller*, 384 F.3d at 1274; *see* Pet. App. 19a (relying on *Miller*). But that is incorrect. State prisons are not like the employment context addressed in *Garrett*, 531 U.S. at 368, where "[i]f special accommodations for the disabled are to be required, they have to come from positive law." In the prison context, as in the access-to-courts context addressed in *Lane*, 541 U.S. at 532, the Constitution itself imposes on States "affirmative obligations" in their treatment of individuals with disabilities. Because Title II, as applied to the prison context, enforces constitutional obligations that demand "more searching judicial review" than does the prohibition on irrational discrimination at issue in the employment setting, *id.* at 522-523, Congress had broader leeway to craft a remedy here than it did in *Garrett*. *See Nevada Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 735-736 (2003).

1. Title II Enforces Those Constitutional Rights That Require Accommodation Of Inmates With Disabilities Because Of The State's Control Over The Inmate And His Environment

"In the prison context," the State's power over an individual "is at its apex." *Johnson v. California*, 125 S. Ct. 1141, 1150 (2005). Prisons are places in which "the government exerts a degree of control unparalleled in civilian society," control that leaves inmates "dependent on the government's permission and accommodation" to satisfy virtually all of their basic human needs. *Cutter v. Wilkinson*, 125 S. Ct. 2113, 2121-2122 (2005). Under this Court's longstanding precedents, the State's control over the inmate, and the inmate's correlative dependence, create affirmative constitutional obligations: "when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." *DeShaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189, 199-200 (1989).

One important source of affirmative State obligations in the prison setting is the Eighth Amendment's Cruel and Unusual Punishments Clause, which has been incorporated in the Fourteenth Amendment. *See Robinson v. California*, 370 U.S. 660, 666 (1962). The Eighth Amendment requires States to "provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must 'take reasonable measures to guarantee the safety of the inmates.'" *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *see also City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983) (inmates imprisoned in jails prior to conviction have "due process rights" that "are at least as great as the Eighth Amendment protections available to a convicted prisoner"). A State's refusal to

provide accommodation to inmates with disabilities often violates these constitutional obligations.

The refusal to accommodate an inmate's disability can constitute "deliberate indifference to serious medical needs" that violates the Eighth Amendment. *Estelle*, 429 U.S. at 104. As then-retired Justice Powell wrote while sitting by designation on the Fourth Circuit, prison officials violate *Estelle* when they "ignore the basic needs of a handicapped individual or postpone addressing those needs out of mere convenience or apathy." *La Faut v. Smith*, 834 F.2d 389, 394 (4th Cir. 1987). Courts have repeatedly applied these principles to hold that the Eighth Amendment requires prisons to reasonably accommodate disabled inmates in circumstances that resemble this case, where the requested accommodation relates to issues of basic mobility and access to hygienic facilities. *See* pp. 27-29, *infra*. They have applied the same principles to hold that the Eighth Amendment requires prisons to provide accommodations (such as sign-language interpreters) to enable disabled inmates to receive needed medical treatment. *See* pp. 29-31, *infra*.

The Eighth Amendment also requires accommodation of inmates' disabilities in other situations, such as housing and placement decisions. Because the State must "take reasonable measures for the prisoners' own safety," *Washington v. Harper*, 494 U.S. 210, 225 (1990), the Constitution requires it to accommodate the disabilities of inmates with mental illness who are suicidal[4] or whose conditions

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[4] *See, e.g., Jacobs v. West Feliciana Sheriff's Dep't*, 228 F.3d 388, 395 (5th Cir. 2000) (placement of inmate who was a known suicide risk in a cell with "a significant blind spot and tie-off points" from which a person could hang herself constitutes deliberate indifference); *Partridge v. Two Unknown Police Officers*, 791 F.2d 1182, 1187 (5th Cir. 1986) (failure to take steps to prevent suicide may constitute deliberate indifference to serious medical needs).

will significantly deteriorate if they are assigned to particular housing units.[5] And the failure to accommodate disability in making housing decisions can constitute "deliberate indifference to inmate health or safety," *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (internal quotation marks omitted), that violates the State's Eighth Amendment duty to protect inmates against harm from other inmates, where a physical or mental disability makes an inmate especially vulnerable to abuse or assault by other inmates. *See, e.g.*, *Ruiz v. Estelle*, 503 F. Supp. 1265, 1344 (S.D. Tex. 1980) (inmates with mental retardation "are peculiarly in need of special protection from physical, emotional, sexual, and financial abuse at the hands of others"), *aff'd in relevant part*, 679 F.2d 1115 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983); 45 Fed. Reg. 37,630 (June 3, 1980) (analysis of regulations implementing Section 504 of the Rehabilitation Act of 1973) ("In making housing and program assignments, [correctional] officials must be mindful of the vulnerability of some handicapped inmates to physical and other abuse by other inmates.").

The State's complete control over the prison environment also entails the affirmative obligation to facilitate inmates' exercise of fundamental Bill of Rights guarantees that have been incorporated in the Fourteenth Amendment. "Prison walls do not form a barrier separating prison inmates from the protections of the Constitution." *Turner v. Safley*, 482 U.S. 78, 84 (1987). For example, States must afford inmates "a reasonably adequate opportunity to

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[5] *See, e.g.*, *Madrid v. Gomez*, 889 F. Supp. 1146, 1265-1266 (N.D. Cal. 1995) (Eighth Amendment prohibits assigning, *inter alia*, people with mental illness, mental retardation, or brain damage to the Security Housing Unit (SHU); "[f]or these inmates, placing them in the SHU is the mental equivalent of putting an asthmatic in a place with little air to breathe" and is "'very likely' to render them psychotic or otherwise inflict a serious mental illness or seriously exacerbate an existing mental illness").

present claimed violations of fundamental constitutional rights to the courts," whether by providing "law libraries and legal assistance" or by offering other effective means to ensure access. *Lewis v. Casey*, 518 U.S. 343, 351-352 (1996). States must also afford inmates "reasonable opportunities" to exercise their religion. *Cruz v. Beto*, 405 U.S. 319, 322 n.2 (1972).

Judicial enforcement of these fundamental constitutional rights is limited in the prison setting by the Court's recognition of "the urgency of discipline, order, safety, and security in penal institutions." *Cutter*, 125 S. Ct. at 2123. As articulated by this Court in *Turner*, 482 U.S. at 89, "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *See Lewis*, 518 U.S. at 361; *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987). *Turner*'s reasonable-relation test does not apply to inmates' claims under the Eighth Amendment or the Equal Protection Clause. *See, e.g.*, *Johnson*, 125 S. Ct. at 1149-1150.[6] But even where it does apply, that reasonable-relation test does not eliminate the government's affirmative, judicially-enforceable obligations. To the contrary, *Turner* itself makes clear, in light of the State's complete control of an inmate's means of exercising his rights, that a State can be required to provide some "accommodation of the asserted constitutional right." 482 U.S. at 90; *see also Overton v. Bazzetta*, 539 U.S. 126, 135 (2003) (the absence of "alternative means of exercising the constitutional right" is evidence of unreasonableness); *O'Lone*, 482 U.S. at 350 ("the availability of accommodations is relevant to the reasonableness inquiry"). In cases like Goodman's,

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[6] *See also Wilkinson v. Austin*, 125 S. Ct. 2384, 2395 (2005) (applying three-factor test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), rather than *Turner* test, to procedural due process claim in prison setting).

where the State's refusal to accommodate an inmate's disability prevents use of facilities such as the prison chapel and law library, Title II enforces these constitutional rights as well.

Finally, Title II enforces States' affirmative obligation, imposed by the Due Process Clause of the Fourteenth Amendment, to provide adequate procedures before "impos[ing] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life" or otherwise depriving the inmate of a protected liberty or property interest. *Sandin v. Conner*, 515 U.S. 472, 484 (1995). That procedural obligation applies when the State seeks to administer antipsychotic drugs without the inmate's consent, *see Harper*, 494 U.S. at 222, when the State seeks to transfer an inmate to a "supermax" facility or a psychiatric hospital, *see Wilkinson*, 125 S. Ct. at 2394-2395; *Vitek v. Jones*, 445 U.S. 480, 493 (1980), when the State seeks to revoke good-time credits earned by an inmate, *see Wolff v. McDonnell*, 418 U.S. 539, 556-557 (1974), and in other similar circumstances, *see, e.g.*, *Sandin*, 515 U.S. at 487 (suggesting that due process is required "where the State's action will inevitably affect the duration of [the inmate's] sentence").

In these circumstances, due process requires that the State provide the inmate notice and a meaningful opportunity to be heard and participate in the decision-making process. *See Wilkinson*, 125 S. Ct. at 2396; *Harper*, 494 U.S. at 235; *Vitek*, 445 U.S. at 494-496. Where an inmate's disability, such as an inability to hear, limits his opportunity to participate without accommodation, those principles require that the State accommodate the disability. *See Bonner v. Arizona Dep't of Corr.*, 714 F. Supp. 420, 425 (D. Ariz. 1989) (Due Process Clause requires that "deaf, mute, and vision-impaired inmate" receive an interpreter in disciplinary proceedings against him).

2. Title II Enforces Constitutional Rights That Prohibit Discrimination Against Inmates With Disabilities

Title II's prohibition of discrimination against inmates with disabilities also enforces their right to equal protection recognized in *Cleburne*, 473 U.S. at 450. This Court has recently emphasized that the Equal Protection Clause's prohibition on invidious discrimination "is not a right that need necessarily be compromised for the sake of proper prison administration" and thus applies fully in the prison context. *Johnson*, 125 S. Ct. at 1149.

Indeed, in the context of prisons, invidious discrimination against individuals with disabilities may violate not only the Equal Protection Clause, but other constitutional rights as well. Sometimes, discrimination takes the form of prison guards targeting inmates with disabilities for assault. *See* pp. 23, 32-33, *infra*. By prohibiting that discrimination, the statute enforces the Eighth Amendment's prohibition on using force "maliciously and sadistically to cause harm." *Hudson v. McMillian*, 503 U.S. 1, 7 (1992). In other instances, where prison officials may discriminate against inmates with disabilities in the provision of the basic necessities of life, such as food and shelter, *see* pp. 23-24, 27-28, *infra*, the statute's prohibition against such discrimination enforces the Eighth Amendment requirement that the State provide for an inmate's basic human needs. And sometimes, discrimination denies inmates with disabilities access to activities that are independently protected by other constitutional provisions such as religious services, quasi-judicial proceedings, and law libraries. *See* pp. 33-36, *infra*. By prohibiting that discrimination, the statute enforces the constitutional provisions (such as the First Amendment and the Due Process Clause) that guarantee access to those activities.

B. States Have Repeatedly Violated The Constitutional Rights Of Inmates With Disabilities

Whether Congress validly exercised its Section 5 power with respect to state prisons "is a question that 'must be judged with reference to the historical experience which it reflects.'" *Lane*, 541 U.S. at 523 (quoting *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966)). Where Congress responds to a "history and pattern" of constitutional violations by States, *Garrett*, 531 U.S. at 368, its power to enact prophylactic legislation is at its strongest.

"The charge that a State has engaged in a pattern of unconstitutional discrimination against its citizens is a most serious one," *Hibbs*, 538 U.S. at 748 (Kennedy, J., dissenting), but here that charge is supported by far "more than conjecture." *Ibid.* The general pattern of state violations of the constitutional rights of individuals with disabilities over the last 40 years, *see Lane*, 541 U.S. at 524, is particularly pronounced in the prison context, where people with disabilities are legally disenfranchised and mistreatment occurs out of the public eye. *Lane* specifically recognized that the States had engaged in a "pattern of unequal treatment" of individuals with disabilities that extended to "the penal system." *Id.* at 525 & n.11 (citing *La Faut*, 834 F.2d at 394 (inmate with paraplegia denied accessible toilet facilities); *Schmidt v. Odell*, 64 F. Supp. 2d 1014 (D. Kan. 1999) (double amputee forced to crawl around the floor of jail); *Key v. Grayson*, 179 F.3d 996 (6th Cir. 1999) (deaf inmate denied access to sex offender program allegedly required for parole), *cert. denied*, 528 U.S. 1120 (2000)). Evidence presented to Congress demonstrated that state violations of disabled inmates' constitutional rights were widespread. And far more than in *Lane*, a massive body of case law involving inmates with disabilities provides "confirming judicial documentation" of extensive "patterns of constitutional

violations committed by the State." *Garrett*, 530 U.S. at 376 (Kennedy, J., concurring).

1. The Evidence Before Congress Revealed A Long History Of State Violations Of The Constitutional Rights Of Inmates With Disabilities

Congress considered the problem of state violations of the constitutional rights of inmates with disabilities for nearly two decades before it enacted the ADA. During that time, Congress adopted a number of laws to address that problem. First, Congress enacted Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 394. Several years later, it enacted the Civil Rights of Institutionalized Persons Act (CRIPA), Pub. L. No. 96-247, 94 Stat. 349 (1980). But despite those laws, and the availability of the general Section 1983 cause of action, inmates with disabilities continued to experience a "widespread and persisting deprivation of [their] constitutional rights." *City of Boerne*, 521 U.S. at 526.[7] In the prison

[7] The discussion that follows includes some examples of constitutional violations in nominally local jails, as well as many examples of constitutional violations in state prisons. As in *Lane*, 541 U.S. at 527 n.16, it is appropriate for the Court to consider that full record of constitutional violations in determining whether the application of Title II to discrimination against inmates with disabilities is congruent and proportional. Jails, like prisons, hold inmates who have been convicted of crimes following prosecutions brought in the name of the State, in state courts, for violations of laws enacted by the state legislature, although jail inmates usually serve shorter sentences than do prison inmates. Jails also hold inmates who have been denied bail pending criminal prosecution in state court or who have been remanded to state custody pending sentencing after conviction by state court. Like nominally local courts, nominally local jails are also frequently deemed to be "arms of the State" who "enjoy precisely the same immunity from unconsented suit as the States." *Ibid.*; *see, e.g.*, *Manders v. Lee*, 338 F.3d 1304, 1328 (11th Cir. 2003) (*en banc*) (county sheriff in Georgia "is an arm of the State, not Clinch County, in establishing use-of-force policy

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context specifically, Congress thus "confronted a 'difficult and intractable proble[m],' where previous legislative attempts had failed." *Hibbs*, 538 U.S. at 737 (citation omitted; quoting *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 88 (2000)). That problem demanded "powerful remedies," *Kimel*, 528 U.S. at 88, including "added prophylactic measures," *Hibbs*, 538 U.S. at 737.

By the time Congress enacted the ADA in 1990, it had long experience with the problem of state violations of the constitutional rights of inmates with disabilities. In 1971 and 1972, Congress first touched on the issues in a series of hearings that examined state prison conditions generally.[8]

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at the jail and in training and disciplining his deputies in that regard"), *cert. denied*, 540 U.S. 1107 (2004); *Lancaster v. Monroe County*, 116 F.3d 1419, 1429 (11th Cir. 1997) (county jailers in Alabama "are state officials entitled to Eleventh Amendment immunity when sued in their official capacities"); *see also Cromer v. Brown*, 88 F.3d 1315, 1332 (4th Cir. 1996) (sheriffs in South Carolina are arms of the State); *Wilkerson v. Hester*, 114 F. Supp. 2d 446, 464-465 (W.D.N.C. 2000) (sheriffs in North Carolina are arms of the State). Accordingly, as in *Lane*, it is appropriate for this Court to look to "conduct of county and city officials" as well as that of States in examining the validity of Congress's action. *Lane*, 541 U.S. at 527 n.16.

[8] *See, e.g.*, *Corrections, Part VIII, Prisons, Prison Reform, and Prisoners' Rights: Michigan: Hearings Before Subcomm. No. 3 of the House Comm. on the Judiciary*, 92d Cong., 2d Sess. 154 (1972) (reprinting judicial opinion discussing inmate with paralysis who could not take showers or use the sink in his cell and was denied a wash pan or basin); *id.* at 136 (same, finding failure to accommodate the dietary needs of inmates with diabetes); *id.* at 153 (same, finding failure to accommodate suicidal inmate's depression by moving him from unsafe cell; the inmate killed himself); *American Prisons in Turmoil: Hearings Before the House Select Comm. on Crime*, 92d Cong., 1st Sess. 249-250 (1971) ("[A] retarded prisoner just cannot cope with what he is faced with in a prison system as it now exists in Florida. There are some people in the prison system that have IQ's of 50, 55, and 60."); *id.* at 256 ("Those with deep-seated mental trouble are mingled in the general prison population to their own detriment and the rest of the prisoners.").

In the late 1970's, while considering the legislation that was ultimately enacted as CRIPA, Congress focused extensively on violations of disabled inmates' rights. Committee hearings on the bill uncovered a wide-ranging record of state violations of the constitutional rights of inmates with disabilities. Congress heard evidence of cases, similar to Goodman's, where the State denied a disabled inmate accommodations that were necessary for basic mobility, sanitary, or medical needs.[9] Congress also heard testimony that inmates with mental and physical disabilities were frequent targets of "[p]hysical abuse at the hands of officers and other inmates." *Civil Rights for Institutionalized Persons: Hearings on H.R. 2439 and H.R. 5791 Before the Subcomm. on Courts, Civil Liberties, and the Admin. of Justice of the House Comm. on the Judiciary*, 95th Cong., 1st Sess. 240 (1977) [hereinafter *CRIPA House Hearings*] (testimony of Stanley Van Ness) ("mentally deficient" inmates as targets of such abuse).[10] And Congress heard of an instance where corrections officers fed inmates with psychiatric disabilities a non-nutritious

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[9] *See, e.g., Civil Rights of Institutionalized Persons: Hearings on S. 1393 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 95th Cong., 1st Sess. 639 (1977) [hereinafter *CRIPA 1977 Senate Hearings*] (testimony of Alvin Bronstein) (inmate who used a wheelchair was placed in a cell on the inaccessible second floor, which he had been unable to leave "for years"); *id.* at 1066 (months- or year-long delays in obtaining prosthetic devices); *id.* at 1067 (inmate with quadriplegia developed bedsores that became infested with maggots because of failure to bathe him and change his dressings); *ibid.* (inmate who had a stroke "was made to sit day after day on a wooden bench beside his bed so that the bed would be kept clean").

[10] *See also Civil Rights of the Institutionalized: Hearings on S. 10 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 96th Cong., 1st Sess. 474 (1979) [hereinafter *CRIPA 1979 Senate Hearings*] (statement of the National Prison Project) (victimization, including rape, of inmates with mental retardation); 126 Cong. Rec. S1860 (daily ed. Feb. 27, 1980) (statement of Sen. Bayh) ("gang rape situation of a paraplegic inmate").

"'stew' (containing no meats or vegetables)," that "did not contain the basic ingredients found in the stew served to other inmates"; when asked why, the officers responded that "mental cases don't know what they eat anyway." *CRIPA 1977 Senate Hearings*, *supra*, at 234 (statement of Dr. Bailus Walker, Jr.).

In addition, Congress heard extensive testimony – bolstered by the judgments of a number of federal courts – that States failed to provide constitutionally adequate mental health treatment to inmates with psychiatric disabilities. *See, e.g.*, *CRIPA House Hearings*, *supra*, at 293 (statement of Drew S. Days, III); *id.* at 316-317, 320-321 (judicial finding of unconstitutional treatment in Louisiana); *CRIPA 1977 Senate Hearings*, *supra*, at 121 (statement of the Mental Health Advocacy Project) (discussing inadequate psychiatric treatment in Los Angeles County Jail); *id.* at 569-570 (statement of the Prisoner Assistance Project) (discussing inadequate psychiatric treatment in Maryland prisons); *id.* at 1066-1067 (judicial finding of unconstitutional treatment in Alabama); *id.* at 1107 (judicial finding of unconstitutional treatment in Oklahoma); *CRIPA 1979 Senate Hearings*, *supra*, at 70 (Report of Task Panel on Legal and Ethical Issues of President's Commission on Mental Health); *id.* at 35 (statement of Drew S. Days, III) (discussing inadequate psychiatric treatment in Florida prisons).

On the basis of that and other testimony, Congress enacted CRIPA, which empowered the Attorney General to bring suits to enforce the constitutional rights of state inmates, in 1980. *See* 42 U.S.C. § 1997 *et seq.* But as Congress moved to consider the ADA, it confronted significant evidence that state violations of disabled inmates' constitutional rights continued. A 1983 Civil Rights Commission report that was considered prominently by Congress specifically listed "[i]nadequate treatment and rehabilitation programs in penal and juvenile facilities,"

"[i]nadequate ability to deal with physically handicapped accused persons and convicts (e.g., accessible jail cells and toilet facilities)" and "[a]buse of handicapped persons by other inmates" as among the discrimination problems faced by individuals with disabilities. U.S. Comm'n on Civil Rights, *Accommodating the Spectrum of Individual Abilities* 168 (1983); *cf. Lane*, 541 U.S. at 527 (relying on that Civil Rights Commission report).

In 1988, the chair of the House Subcommittee on Select Education and Civil Rights appointed the Task Force on the Rights and Empowerment of Americans with Disabilities to gather facts concerning the proposed ADA. *See* House Comm. on Educ. & Labor, *Legislative History of Pub. L. No. 101-336: The Americans with Disabilities Act* 300 (1990) [hereinafter "Leg. Hist."]. The Task Force heard a number of accounts of discrimination against inmates with disabilities. *See Lane*, 541 U.S. at 527 (relying on accounts of discrimination submitted to the Task Force). Many of those accounts related directly to state violations of the kinds of constitutional rights discussed above, pp. 14-18: subjecting inmates with developmental disabilities to longer prison terms and placing them in settings where they were especially vulnerable to abuse by fellow inmates;[11] denying medical and psychiatric treatment to inmates with disabilities;[12] and denying interpretive services to inmates with hearing impairments.[13]

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[11] *See* Lodging of the United States, *Board of Trustees v. Garrett*, No. 99-1240, at 1091 (New Mexico).

[12] *See id.* at 55 (Alaska) (jail denied medical treatment to inmate with disability); *id.* at 331 (Delaware) (denial of psychiatric care to juvenile and adult offenders).

[13] *See id.* at 572 (Illinois) (hearing-impaired jail inmates denied interpretive services); *id.* at 673 (Kansas) (deaf man held in jail and denied interpretive services); *id.* at 787 (Maryland) (deaf inmates lacked telecommunications devices for the deaf); *id.* at 1161 (North Carolina) (deaf person jailed without interpreter).

The congressional committees that considered the ADA heard additional evidence of violations of the constitutional rights of inmates with disabilities. The House Judiciary Committee report noted that "persons with epilepsy, and a variety of other disabilities," are often "deprived of medications while in jail, resulting in further seizures." Leg. Hist., *supra*, at 490; *see also id.* at 1080 (testimony of Ilona Durkin) (stating that "many adults with traumatic brain injury" are "jailed because of aberrant behavior" caused by their disability). Hearings on the bill included testimony that jail inmates with hearing impairments had been denied interpreters, so that they could not understand their rights, *see id.* at 1331 (testimony of Justin Dart), and that jail inmates with HIV had been unjustifiably isolated and humiliated by their jailers, *see id.* at 1005 (testimony of Belinda Mason) (inmate with HIV forced by officers to spend the night in a car in an open parking lot, attracting onlookers "staring and pointing at the man").

Based on all that evidence, developed over the course of two decades, Congress enacted the ADA in 1990. That statute included specific findings of widespread and persisting "discrimination against individuals with disabilities" in, *inter alia*, "public services" and "institutionalization." 42 U.S.C. § 12101(a)(2), (3). As the foregoing discussion demonstrates, Congress had ample basis for those findings.

2. A Massive Body Of Case Law Provides "Confirming Judicial Documentation" Of Extensive State Violations Of The Constitutional Rights Of Inmates With Disabilities

The evidence of unconstitutional treatment of inmates with disabilities is not limited to "unexamined, anecdotal accounts" of the sort the Court found insufficient in

Garrett, 531 U.S. at 370. Like the more general "pattern of unequal treatment" of individuals with disabilities that this Court described in *Lane*, 541 U.S. at 525, a long body of judicial decisions – beginning before the enactment of the ADA and extending to the present day – confirms that States have frequently violated the constitutional rights of inmates with disabilities. In literally dozens of cases, courts have made affirmative findings, reflected in final judgments issued in reported opinions, that States had violated the constitutional rights of inmates with disabilities. And in many other cases, ultimately resolved without reported opinion, courts have ruled that inmates with disabilities presented allegations or evidence of unconstitutional conduct sufficient to proceed with actions against state officials under 42 U.S.C. § 1983.

In short, unlike in any of this Court's other post-*Boerne* cases, a massive body of reported lower-court decisions documents "extensive litigation and discussion of the constitutional violations" in the prison setting. *Garrett*, 531 U.S. at 376 (Kennedy, J., concurring). That "confirming judicial documentation," *ibid.*, underscores the need for the prophylactic legislation enacted by Congress to protect the constitutional rights of inmates with disabilities.

Courts have repeatedly found that States violated the Eighth Amendment by failing to accommodate the basic mobility and sanitary needs of disabled inmates. In 1980, the United States District Court for the Southern District of Texas ruled, on the basis of an extensive record, that the Texas Department of Corrections violated the Eighth Amendment rights of inmates with physical disabilities by delaying the provision and maintenance of wheelchairs, hearing aids, and other assistive devices, by refusing to provide wheelchair-accessible cells, and by refusing to provide accessible toilet and shower facilities. *Ruiz*, 503 F. Supp. at 1340-1341. Numerous cases decided both

before and since the enactment of the ADA have found similar violations, often in circumstances that echo the facts of this case: confinement in cells that are not wheelchair-accessible, thus effectively preventing inmates with disabilities from leaving or moving around within their cells; and refusal to provide accessible hygienic facilities, resulting in injuries and unsanitary conditions for inmates with disabilities.[14]

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[14] *See, e.g.*, *Simmons v. Cook*, 154 F.3d 805, 807-808 (8th Cir. 1998) (confinement of inmates with paraplegia to wheelchair-inaccessible cells without accessible toilet violated Eighth Amendment); *Frost v. Agnos*, 152 F.3d 1124, 1128-1129 (9th Cir. 1998) (failure to provide accessible shower violated constitutional rights of pretrial detainee who because of his leg cast "fell and injured himself several times"); *Hicks v. Frey*, 992 F.2d 1450, 1457 (6th Cir. 1993) (placing inmate with paraplegia in an isolation cell "too small to accommodate his wheelchair," thereby denying mobility and access to a shower, violated Eighth Amendment); *Weeks v. Chaboudy*, 984 F.2d 185, 187 (6th Cir. 1993) (denial of wheelchair to inmate with paralysis, resulting in inmate's inability to shower himself or leave his cell, violated Eighth Amendment); *Johnson v. Hardin County*, 908 F.2d 1280, 1284 (6th Cir. 1990) (denial, *inter alia*, of crutches to inmate with a disability violated Eighth Amendment); *Leach v. Shelby County Sheriff*, 891 F.2d 1241, 1243-1244 (6th Cir. 1989) (several days' denial of appropriate mattress, bathing, and catheter supplies to inmate with paraplegia violated Eighth Amendment), *cert. denied*, 495 U.S. 932 (1990); *La Faut*, 834 F.2d at 394 (failure to provide appropriate toilet facilities and rehabilitation therapy to inmate with paraplegia violated Eighth Amendment); *Beckford v. Irvin*, 49 F. Supp. 2d 170, 180 (W.D.N.Y. 1999) (Eighth Amendment violation existed where inmate "was regularly deprived use of his wheelchair for extended periods of time, . . . was unable to shower, and . . . was not allowed to use a cup in order to try to bathe by taking water out of his cell toilet or drinking fountain"); *Casey v. Lewis*, 834 F. Supp. 1569, 1582 (D. Ariz. 1993) (lack of accessible bathrooms, showers, and cells violated Eighth Amendment); *see also Miller*, 384 F.3d at 1261-1263 (reversing grant of summary judgment to State prison official on Eighth Amendment claim of inmate with paraplegia who was "denied wheelchair repairs, physical therapy, medical consultations, and medical devices such as leg braces and orthopedic shoes," who was unable to move because his cell was too small to move his wheelchair and prison officials refused to remove his bed daily, and who

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Other Eighth Amendment cases have involved States' denial of essential medical care to inmates with disabilities. In a number of instances, courts have concluded that the medical treatment a State provided for particular disabilities was inadequate or simply nonexistent. Many of

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was denied accessible showers and toilets); *Bradley v. Puckett*, 157 F.3d 1022, 1025-1026 (5th Cir. 1998) (allegation that prison officials confined disabled inmate to lockdown cell with inaccessible shower facilities stated claim for violation of the Eighth Amendment); *Bryant v. Madigan*, 84 F.3d 246, 247 (7th Cir. 1996) (reversing grant of summary judgment to state prison officials on Eighth Amendment claim of inmate with quadriplegia who fell out of bed and broke his leg after prison refused to provide guardrails for his bed); *Cummings v. Roberts*, 628 F.2d 1065, 1068 (8th Cir. 1980) (jail inmate's allegation "that because the defendants failed to give him a wheelchair, he was forced to crawl on the floor" stated Eighth Amendment claim); *Allah v. Goord*, No. 04-6717, 2005 WL 1162333 at *5-*6 (S.D.N.Y. May 13, 2005) (inmate with paraplegia stated Eighth Amendment claim based on allegations that prison officials transported him in a van that did not accommodate his wheelchair, and that he was injured as a result); *Becker v. Oregon*, 170 F. Supp. 2d 1061, 1068 (D. Or. 2001) (allegation of denial of accessible shower to inmate with leg amputation states Eighth Amendment claim); *Hallett v. New York State Dep't of Corr. Servs.*, 109 F. Supp. 2d 190, 201 (S.D.N.Y. 2000) (inmate's allegation of five-month deprivation of a proper wheelchair stated claim under Eighth Amendment); *Taylor v. Plousis*, 101 F. Supp. 2d 255, 265-269 (D.N.J. 2000) (denying defendants' motion for summary judgment against claim that refusal to timely provide adequate prosthesis for dual-amputee inmate constituted deliberate indifference); *Roop v. Squadrito*, 70 F. Supp. 2d 868, 875-876 (N.D. Ind. 1999) (inmate with HIV overcame summary judgment on Eighth Amendment claim based on evidence that "he was forced to sleep on a mattress in a filthy cell, often times without access to drinking water or a flushable toilet; he was not allowed to interact with others because he was kept in isolation; and he was roused from his sleep initially on the quarter hour and later on the hour"); *Candelaria v. Coughlin*, 787 F. Supp. 368, 378 (S.D.N.Y.) (allegations that inmate with paraplegia was denied an adequate wheelchair, orthopedic treatment, and liquid dietary supplement stated Eighth Amendment claim), *aff'd*, 979 F.2d 845 (2d Cir. 1992); *Young v. Harris*, 509 F. Supp. 1111, 1113 (S.D.N.Y. 1981) (allegation that prison refused to provide disabled inmate "with a leg brace that is necessary to enable him to walk without substantial difficulty" stated an Eighth Amendment claim).

these cases predate the ADA,[15] but the problem persisted even after the statute's enactment.[16] In other instances, States

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[15] *See, e.g.*, *Wellman v. Faulkner*, 715 F.2d 269, 272-273 (7th Cir. 1983) (denial of adequate psychiatric care to inmates with mental illness violated Eighth Amendment), *cert. denied*, 468 U.S. 1217 (1984); *Ramos v. Lamm*, 639 F.2d 559, 577-578 (10th Cir. 1980) (denial of adequate mental health care, resulting in suffering, suicides, and self-mutilation by inmates violated Eighth Amendment), *cert. denied*, 450 U.S. 1041 (1981); *Tillery v. Owens*, 719 F. Supp. 1256, 1302-1303 (W.D. Pa. 1989) (inadequate care of "serious mental illness" violated Eighth Amendment), *aff'd*, 907 F.2d 418 (3d Cir. 1990); *cert. denied*, 502 U.S. 927 (1991); *Casey v. Lewis*, 834 F. Supp. 1477, 1488-1491 nn.109, 123 (D. Ariz. 1993) (inadequate treatment of inmates with HIV); *Cody v. Hilliard*, 599 F. Supp. 1025, 1058-1059 (D.S.D. 1984) (denial of adequate mental health care to inmates with "serious psychiatric needs" violated Eighth Amendment), *rev'd on other grounds*, 830 F.2d 912 (8th Cir. 1987) (*en banc*), *cert. denied*, 485 U.S. 906 (1988); *Balla v. Idaho State Bd. of Corr.*, 595 F. Supp. 1558, 1569 (D. Idaho 1984) (State violated Eighth Amendment by providing "[l]ittle or no psychiatric care or assistance" to inmates with serious mental illnesses); *Ruiz*, 503 F. Supp. at 1346 (Eighth Amendment violation where "the right of physically handicapped inmates to minimal levels of medical care has been systematically ignored"); *Palmigiano v. Garrahy*, 443 F. Supp. 956, 975-976 (D.R.I. 1977) (inadequate mental health care in state prison violated Eighth Amendment), *remanded for further consideration on other grounds*, 599 F.2d 17 (1st Cir. 1979); *Mitchell v. Untreiner*, 421 F. Supp. 886, 891 (N.D. Fla. 1976) (Eighth Amendment violation where no psychological or psychiatric treatment available for inmates with mental illness); *Battle v. Anderson*, 376 F. Supp. 402, 415 (E.D. Okl. 1974) (inadequate mental health care in state prison violated Eighth Amendment); *Newman v. Alabama*, 349 F. Supp. 278, 284 (M.D. Ala. 1972) (Eighth Amendment violation where "the large majority of mentally disturbed inmates receive no treatment whatsoever."), *aff'd in relevant part*, 503 F.2d 1320 (5th Cir. 1974), *cert. denied*, 421 U.S. 948 (1975); *Talley v. Stephens*, 247 F. Supp. 683, 687 (E.D. Ark. 1965) (forcing inmates with "serious physical handicaps" to perform labor that they were physically unable to perform, and denying access to medical care, violated Eighth Amendment); *see also Maclin v. Freake*, 650 F.2d 885, 889 (7th Cir. 1981) (reversing grant of summary judgment to State prison official in case where inmate with paraplegia claimed that he had been denied any physical therapy for almost a year).

[16] *See, e.g.*, *Coleman v. Wilson*, 912 F. Supp. 1282, 1305-1319 (E.D. Cal. 1995) (denial of adequate mental health care to inmates with

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refused to provide accommodations such as interpreters during medical treatment that are essential to enable inmates with disabilities to receive appropriate and safe treatment.[17]

Other Eighth Amendment cases involve the failure to protect inmates with disabilities from physical harm. Courts have found that States have violated the Eighth Amendment by assigning inmates with disabilities to certain housing units where the conditions were likely to lead to

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severe psychiatric disabilities), *appeal dismissed*, 101 F.3d 705 (9th Cir. 1996); *Madrid*, 889 F. Supp. at 1226 ("Defendants' response to the lack of adequate mental health care – and particularly the response of defendant Gomez, who has overall responsibility for the California Department of Corrections – reflects a deplorable, and clearly conscious, disregard for the serious mental health needs of inmates."); *Casey*, 834 F. Supp. at 1547-1550 ("appalling" conditions for inmates with serious mental illnesses: "Rather than providing treatment for serious mental illnesses, ADOC punishes these inmates by locking them down in small, bare segregation cells for their actions that are the result of their mental illnesses. These inmates are left in segregation without mental health care."); *Arnold on Behalf of H.B. v. Lewis*, 803 F. Supp. 246, 256-257 (D. Ariz. 1992) (state provided "grossly inadequate mental health care" for inmate with psychiatric disability); *see also Rouse v. Plantier*, 182 F.3d 192, 199 (3d Cir. 1999) (concluding, in class-action challenge to conditions for inmates with diabetes, that "[b]ased on the evidence in the summary judgment record, there may be one or more subgroups of plaintiffs as to whom particular aspects of the care allegedly provided was not consistent with Eighth Amendment requirements"); *Flowers v. Bennett*, 135 F. Supp. 2d 1150, 1156 (N.D. Ala. 2000) (denying defendants' motion for summary judgment in case involving denial of insulin to inmate with diabetes); *D.M. v. Terhune*, 67 F. Supp. 2d 401 (D.N.J. 1999) (approving consent decree in challenge by inmates with mental disabilities to State's denial of mental health treatment); *McNally v. Prison Health Servs.*, 46 F. Supp. 2d 49, 53-57 (D. Me. 1999) (denying State's motion for summary judgment in case brought by inmate with HIV who was denied medication).

[17] *See, e.g., Clarkson v. Coughlin*, 898 F. Supp. 1019, 1043 (S.D.N.Y. 1995) (denial of interpretive services and assistive devices to deaf inmates during medical treatment violated Eighth Amendment).

significant deterioration of individuals with disabilities.[18] Courts have also concluded that States unconstitutionally failed to protect disabled inmates from attacks by other inmates,[19] and that they failed to take constitutionally required steps to prevent inmates with mental disabilities from committing suicide.[20] Unfortunately, in some instances,

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[18] *See, e.g.*, *Madrid*, 889 F. Supp. at 1266 (assignment of inmates with mental disabilities to SHU violated Eighth Amendment because that assignment was "'very likely' to render them psychotic or otherwise inflict a serious mental illness or seriously exacerbate an existing mental illness"); *Walker v. State*, 68 P.3d 872, 884 (Mont. 2003) (confinement of inmate with mental illness in conditions that "cause[d] serious mental illness to be greatly exacerbated" violated state constitutional counterpart to the Eighth Amendment); *see also Austin v. Wilkinson*, No. 01-71, 2002 WL 32828650 at *2 (N.D. Ohio, Apr. 5, 2002) (approving settlement that, *inter alia*, "stops the placement and retention of inmates at the OSP [a "super-max" facility] who are seriously mentally ill"); *Jones'El v. Berge*, 164 F. Supp. 2d 1096, 1118 (W.D. Wis. 2001) (granting, in Eighth Amendment case, preliminary injunction prohibiting assignment of seriously mentally ill inmates to Supermax prison based on evidence "that Supermax is not appropriate for seriously mentally ill inmates because of the isolation resulting from the physical layout, the inadequate level of staffing and the customs and policies"); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1989) (denying state officials' motion for summary judgment on Eighth Amendment claim based, *inter alia*, on "the failure to screen out from SHU those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by their placement there").

[19] *See, e.g.*, *Freeman v. Berry*, No. 87-0259, 1994 WL 760820 at *2-*3 (W.D. Ky. May 19, 1994) (deliberate indifference to risk of attacks by other inmates on inmate with HIV); *Ruiz*, 503 F. Supp. at 1346 (failure to protect inmates with mental retardation from abuse and physical harm by other inmates violated Eighth Amendment); *see also Taylor v. Michigan Dep't of Corr.*, 69 F.3d 76, 81-84 (6th Cir. 1995) (inmate with mental retardation who was raped after being transferred to prison where inmates were housed in 60-to-a-room barracks presented evidence sufficient to overcome summary judgment on his Eighth Amendment claim).

[20] *See, e.g.*, *Simmons v. City of Philadelphia*, 947 F.2d 1042 (3d Cir. 1991) (failure to take steps to prevent suicides by inmates with serious psychological needs violated Constitution), *cert. denied*, 503 U.S. 985

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prison guards themselves have even targeted disabled inmates for assault, in violation of the Eighth Amendment.[21]

The cases demonstrate that States have violated rights secured to inmates with disabilities by constitutional provisions other than the Eighth Amendment as well. States have denied due process by failing to accommodate inmates' disabilities in the course of disciplinary proceedings.[22] They have also engaged in intentional discrimination that has deprived inmates with disabilities of access to constitutionally protected activities, such as

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(1992); *see also Gibson v. County of Washoe*, 290 F.3d 1175, 1187-1193 (9th Cir. 2002) (reversing grant of summary judgment to defendant based on claim that defendant was deliberately indifferent to the serious medical needs of inmate with manic depressive disorder, resulting in his death), *cert. denied*, 537 U.S. 1106 (2003); *Jacobs*, 228 F.3d at 395 (denying motion to dismiss based on allegations that defendants were deliberately indifferent by placing inmate who was a known suicide risk in a cell with "a significant blind spot and tie-off points" from which a person could hang herself); *Viero v. Bufano*, 901 F. Supp. 1387, 1393-1394 (N.D. Ill. 1995) (allegations of failure to provide accommodations such as medication, counseling, and observation for inmate "with a history of severe psychological and psychosocial problems" stated claim for deliberate indifference to suicide risk).

[21] *See, e.g., Parrish v. Johnson*, 800 F.2d 600, 605 (6th Cir. 1986) (prison guard violated Eighth Amendment when he assaulted inmate with paraplegia, forced him to sit in his own feces, taunted him with a knife, extorted food from him, and verbally abused him); *Madrid*, 889 F. Supp. at 1166-1167 (inmate with mental illness suffered second- and third-degree burns over one-third of his body when corrections officers bathed him in scalding water); *see also Mullen v. Smith*, 738 F.2d 317, 318 (8th Cir. 1984) (*per curiam*) (inmate's allegation that prison officials forcibly removed him from his bed and ordered him to walk – after he had suffered a spinal injury that left him unable to walk – stated a claim for violation of the Eighth Amendment).

[22] *See, e.g., Ruiz*, 503 F. Supp. at 1344 (failure to provide assistance necessary to enable inmates with mental retardation to understand and participate in disciplinary proceedings violated Constitution); *see also Bonner*, 714 F. Supp. at 425-426 (denying State's motion for summary judgment where deaf inmate claimed that refusal to provide sign language interpreter in disciplinary hearings denied due process).

use of prison law libraries and participation in prison religious services.[23]

Review of reported decisions in ADA prison cases reveals that inmates with disabilities have invoked the statute to challenge state prison conditions that closely resemble those that courts have held unconstitutional. Inmates have challenged the denial of basic needs such as accessible cells and toilet and shower facilities.[24] They also

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[23] *See, e.g., Nolley v. County of Erie*, 776 F. Supp. 715, 740-742 (W.D.N.Y. 1991) (segregation of inmate with HIV deprived her of access to law library and religious services in violation of First Amendment).

[24] *See, e.g., Kiman v. New Hampshire Dep't of Corr.*, 301 F.3d 13, 15-16, 24-25 (1st Cir. 2002) (reversing sovereign-immunity dismissal in ADA claim brought by inmate with amyotrophic lateral sclerosis who was denied accessible shower and toilet facilities), *vacated*, 310 F.3d 785 (1st Cir. 2002) (*en banc*), *district court judgment aff'd by equally divided court*, 332 F.3d 29 (1st Cir. 2003) (*en banc*), *vacated and remanded*, 541 U.S. 1059 (2004); *St. Pierre v. McDaniel*, 172 F.3d 58 (9th Cir. 1999) (unpublished) (reversing grant of summary judgment to State prison officials in ADA case alleging that denial of crutches deprived inmate of access to, *inter alia*, showers and medical facilities); *Fennell v. Simmons*, 162 F.3d 1161 (6th Cir. 1998) (unpublished) (reversing grant of summary judgment, on qualified immunity grounds, in ADA case brought by inmate with paraplegia confined to inaccessible jail); *Hicks v. Armstrong*, 116 F. Supp. 2d 287, 289-290 (D. Conn. 1999) (denying motion to dismiss ADA claim brought by inmate with paraplegia who was denied, *inter alia*, accessible shower and toilet facilities); *Temples v. Crow*, No. 99-1147, 1999 WL 1053120 at *1-*2 (M.D. Fla., Oct. 20, 1999) (denying motion to dismiss ADA claim alleging denial of accessible transportation, toilet, and shower facilities to inmate who used wheelchair); *Cooper v. Weltner*, No. 97-3105, 1999 WL 1000503 at *5-*6 (D. Kan. Oct. 27, 1999) (denying defendants' motion for summary judgment in ADA case brought by inmate with disability denied accessible shower facilities); *Purcell v. Pennsylvania Dep't of Corr.*, No. 95-6720, 1998 WL 10236 at *4-*5 (E.D. Pa., Jan. 9, 1998) (denying State's motion for summary judgment in ADA case challenging denial of accessible cell and shower facilities); *Kaufman v. Carter*, 952 F. Supp. 520, 523-524 (W.D. Mich. 1996) (denying defendants' motion for summary judgment in ADA case brought by inmate with amputations on both legs who was denied accessible shower and toilet facilities, resulting in injury); *Harrelson v. Elmore County*, 859 F. Supp. 1465,

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have challenged the refusal to provide needed interpreters during medical appointments, disciplinary hearings against them, and other quasi-judicial proceedings concerning the terms or length of their confinement.[25] Inmates

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1466 (M.D. Ala. 1994) (addressing ADA claim of inmate with paraplegia "denied use of his wheelchair and forced to crawl around the cell" and "not provided with either toilet or shower facilities designed for disabled persons"); *Noland v. Wheatley*, 835 F. Supp. 476, 480-481 (N.D. Ind. 1993) (denying motion to dismiss ADA claim brought by semi-quadriplegic inmate who used wheelchair and was placed for three months in cell with "no bed or other furniture, no running water, and only an open drain in the floor for disposal of bodily waste," was given "no means of washing his hands or cleaning either his colostomy or urostomy bags after emptying them," and was given inadequate medical care); *Outlaw v. City of Dothan*, No. 92-A-1219-S, 1993 WL 735802 at *1-*2 (M.D. Ala., Apr. 27, 1993) (denying defendants' motion for summary judgment in ADA case alleging denial of accessible shower facilities).

[25] *See, e.g.*, *Armstrong v. Davis*, 275 F.3d 849, 857-858 (9th Cir. 2001) (affirming, in relevant part, injunction granted to plaintiffs in ADA case involving State's failure to provide accommodations necessary to enable individuals with disabilities to participate meaningfully in parole and parole revocation hearings), *cert. denied*, 537 U.S. 812 (2002); *Chisolm v. McManimon*, 275 F.3d 315, 326 (3d Cir. 2001) (reversing grant of summary judgment to defendants in ADA case brought by deaf inmate denied, *inter alia*, interpreter during intake and medical evaluation); *Randolph v. Rogers*, 170 F.3d 850, 858 (8th Cir. 1999) (finding disputed issues of material fact in ADA case alleging failure to provide interpreter to deaf inmate in disciplinary hearings and provision of medical care); *Duffy v. Riveland*, 98 F.3d 447, 450-452 (9th Cir. 1996) (reversing grant of summary judgment to defendants in ADA case brought by inmate with hearing impairment denied qualified interpreter at disciplinary and classification hearings); *Brown v. King County Dep't of Adult Corr.*, No. C97-1909W, 1998 WL 1120381 at *2 (W.D. Wash., Dec. 9, 1998) (denying defendants' motion for summary judgment in ADA case brought by deaf inmate who was denied interpreter during communications with medical staff); *Rewolinski v. Morgan*, 896 F. Supp. 879, 881 (E.D. Wis. 1995) (granting *in forma pauperis* status in ADA case brought by deaf inmate who was denied interpreter at disciplinary hearings and medical appointments).

also have brought ADA suits to challenge the exclusion of inmates with disabilities from constitutionally protected activities such as religious services and use of the law library.[26] That body of case law further underscores the important role that Title II of the ADA plays in preventing and providing a remedy for constitutional violations.

C. Title II Is A Congruent And Proportional Response To The History And Likelihood Of Violations Of The Constitutional Rights Of Inmates With Disabilities

In the prison context, as in the access-to-courts context addressed in *Lane*, Title II is "an appropriate response to this history and pattern of unequal treatment." *Lane*, 541 U.S. at 530. As the previous sections of this brief demonstrate, the State's unparalleled control over the lives of inmates creates certain affirmative constitutional obligations on the part of the State, including the obligation to provide some reasonable accommodations so that inmates can have meaningful access to the food, shelter, and medical care that the State must provide

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[26] *See, e.g.*, *Love v. Westville Corr. Center*, 103 F.3d 558, 558-559 (7th Cir. 1996) (affirming judgment for plaintiff in ADA case brought by inmate with quadriplegia who was denied access to "the prison's recreational facilities, its dining hall, the visitation facilities that were open to the general inmate population," denied ability "to participate in substance abuse, education, church, work, or transition programs available to members of the general inmate population," and given only limited access "to the law library, the regular library, and the commissary"); *Kruger v. Jenne*, 164 F. Supp. 2d 1330, 1332 (S.D. Fla. 2000) (denying motion to dismiss ADA claim brought by blind inmate who was denied accommodations including, *inter alia*, a cane and "talking books"; as a result, he could not access the law library or other parts of the jail, or participate in recreation); *Montez v. Romer*, 32 F. Supp. 2d 1235, 1237 (D. Colo. 1999) (class action alleging, *inter alia*, that denial of accommodations left inmates with disabilities "unable to use law libraries" and "medical clinics").

to those it incarcerates. And States have repeatedly violated those constitutional rights – even after Congress enacted other legislation to attempt to protect the rights of inmates with disabilities. When considered in the light of that background, the same conclusion the Court reached in the access-to-courts context is warranted here: In the prison context, as well, Title II is plainly "'responsive to, or designed to prevent, unconstitutional behavior.'" *Id.* at 533 (quoting *City of Boerne*, 521 U.S. at 532).

1. Title II Focuses On State Conduct That Poses A Significant Threat To Inmates' Constitutional Rights, While Limiting Its Intrusion On State Prerogatives

Given the circumstances in which the Constitution itself requires accommodation of inmates' disabilities, and the many occasions when States have violated the Constitution by failing to provide such accommodations, the conduct prohibited by Title II poses an obvious threat to constitutional rights. Frequently, the accommodations needed by inmates with disabilities are relatively inexpensive and easy to provide. Installation of a grab bar to permit Goodman to use the toilet in his cell would impose little burden on the State, for example. Nor would it impose any undue burden on the State to remove during the day a wheelchair-using inmate's bed from his cell to permit him to move around – the accommodation sought by the plaintiff in *Miller*, who is also incarcerated at GSP. *See Miller*, 384 F.3d at 1254. When a state prison denies such a reasonable accommodation to an inmate with a disability, the long record of constitutional violations against inmates with disabilities provided Congress a strong "reason to believe," *City of Boerne*, 521 U.S. at 532, that the failure to provide the accommodation reflects

deliberate indifference rather than a constitutionally legitimate state interest. The statute thus targets conduct that has "a significant likelihood of being unconstitutional." *Ibid.*

Not all of the conduct Title II prohibits in the prison context violates the Constitution. But to the extent that Title II proscribes such constitutional conduct in the prison context, it permissibly does so "in order to prevent and deter unconstitutional conduct." *Hibbs*, 538 U.S. at 728. The statute's added margin of protection serves to ensure that actual constitutional violations do not escape the law's sanction – as they predictably will, for example, in cases where inmates are unable to prove that the particular defendants had the subjective mental state required to make out a constitutional claim. *Cf. Farmer*, 511 U.S. at 837 (Eighth Amendment violation requires subjective deliberate indifference). An inmate's inability to establish that the defendant had the requisite mental state may often reflect the inherent inability of incarcerated persons to gather evidence about the mental states of those who confine them, rather than the absence of an underlying constitutional violation.

By imposing on States the duty to provide reasonable accommodations to inmates with disabilities without a showing of a particular prison official's mental state, Title II thus helps to ensure that constitutional violations do not go unremedied. In parallel circumstances, this Court has recognized that Section 5 gives Congress power to dispense with proof of the mental state required to establish a constitutional violation. *See Lane*, 541 U.S. at 520 ("When Congress seeks to remedy or prevent unconstitutional discrimination, § 5 authorizes it to enact prophylactic legislation proscribing practices that are discriminatory in effect, if not in intent, to carry out the basic objectives of the Equal Protection Clause."); *Hibbs*, 538 U.S. at 736 (Congress may enact prophylactic rules to prevent and

provide a remedy for "subtle discrimination that may be difficult to detect on a case-by-case basis").

Moreover, a number of features of the ADA focus the statute on conduct that is particularly likely to reflect a violation of the constitutional rights of inmates with disabilities. One key means by which the statute targets constitutional violations in the prison context is its "disability" definition, which individuals must satisfy to be eligible for protection. *See* 42 U.S.C. § 12132. Under that definition, a plaintiff must show that he has (or is perceived by the State to have) a condition that imposes "substantial[]" limitations on "major life activities." *Id.* § 12102(2); *see, e.g.*, *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555, 565 (1999) (emphasizing "the fundamental statutory requirement that only impairments causing 'substantial limitat[ions]' in individuals' ability to perform major life activities constitute disabilities").

That statutory language, which this Court has "interpreted strictly to create a demanding standard for qualifying as disabled," *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 197 (2002), limits protection to individuals who are very likely to have the kind of "serious medical needs" that require accommodation under the Eighth Amendment, *Estelle*, 429 U.S. at 104, as well as those who are especially likely to need accommodation to exercise the rights guaranteed to them under the Bill of Rights and the Due Process Clause. Individuals who satisfy that definition are particularly likely to have conditions that have historically been targets of discrimination. *See Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 494-495 (1999) (Ginsburg, J., concurring) (ADA's disability definition targets an "historically disadvantaged[] class").

The ADA's requirement of "reasonable modifications," 42 U.S.C. § 12131, also limits the reach of the statute to conduct that is likely to violate the Constitution. As this Court emphasized in *Lane*, 541 U.S. at 531-532, that

requirement demands that States provide only those modifications that are "reasonable" and that "would not fundamentally alter the nature of the service provided." *See* 28 C.F.R. § 35.130(b)(7) (requiring "reasonable modifications" except where "making the modifications would fundamentally alter the nature of the service, program, or activity"); *see also Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 603-606 (1999) (plurality opinion) (interpreting Title II's "fundamental alteration" defense).

Where architectural barriers are at issue, the statute imposes stringent standards of accessibility only on facilities built or altered after the statute's 1992 effective date. *See* 28 C.F.R. § 35.151. For "older facilities, for which structural change is likely to be more difficult," States may avail themselves of "a variety of less costly measures" so long as they ensure that the plaintiff has access to the facility's services, programs, and activities. *Lane*, 541 U.S. at 532 (citing 28 C.F.R. § 35.150(b)(1)); *see also Miller*, 384 F.3d at 1267 ("[P]risoner access to programs need not be universal because a public entity need not make structural changes in existing facilities where other methods are effective in achieving compliance with this section.") (internal quotation marks and brackets omitted). "And in no event is the [State] required to undertake measures that would impose an undue financial or administrative burden, threaten historic preservation interests, or effect a fundamental alteration in the nature of the service." *Lane*, 541 U.S. at 532 (citing 28 C.F.R. §§ 35.150(a)(2), (a)(3)). These same substantive standards govern the federal Bureau of Prisons, and have since 1978, *see* Pub. L. No. 95-602, 92 Stat. 2982 (1978) (codified at 29 U.S.C. § 794), and there is no indication that they have proven onerous or unworkable.

The lower courts have recognized that "[t]erms like 'reasonable' and 'undue' are relative to circumstances, and the circumstances of a prison are different from those of a

school, an office, or a factory." *Crawford v. Indiana Dep't of Corr.*, 115 F.3d 481, 487 (7th Cir. 1997) (Posner, J.). Accordingly, they have determined that the "reasonable modification" analysis in the prison setting must take account of "[s]ecurity concerns, safety concerns, and administrative exigencies." *Love*, 103 F.3d at 561; *see also Cutter*, 125 S. Ct. at 2123 (reading "compelling governmental interest" standard in the Religious Land Use and Institutionalized Persons Act as one that should be "applied in an appropriately balanced way" in the prison context, taking account of "the urgency of discipline, order, safety, and security in penal institutions"); *cf. Spector v. Norwegian Cruise Lines Ltd.*, 125 S. Ct. 2169, 2180-2181 (2005) (reading requirement of "readily achievable" barrier removal in Title III of the ADA, 42 U.S.C. § 12182(b)(2)(A)(iv), as one that, as applied to cruise ships, should take account of concerns about shipboard safety and compliance with international legal obligations).

In so ruling, the lower courts have focused the statute's prohibitions even more precisely on those acts that are particularly likely to violate the constitutional rights of inmates with disabilities. When a State fails to provide a disabled inmate with an accommodation that could reasonably be provided without sacrificing legitimate penological interests such as security concerns or administrative imperatives, there is a substantial likelihood that the State's action violates the Constitution. *See, e.g.*, *Turner*, 482 U.S. at 89-90 (holding that a prison regulation is generally valid if it is "reasonably related to legitimate penological interests," but recognizing that prisons may be required to provide some "accommodation of . . . asserted constitutional right[s]"); *Rhodes v. Chapman*, 452 U.S. 337, 356 (1981) (infliction of pain without penological purpose violates Eighth Amendment).

The law governing Title II's damages remedy limits the statute's impact on legitimate state operations as well.

Punitive damages are not available under the statute. *See Barnes v. Gorman*, 536 U.S. 181, 188 (2002). The Prison Litigation Reform Act (PLRA), Pub. L. No. 104-134, tit. VIII (1996), further limits the damages available in this context by prohibiting recovery "for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. § 1997e(e). As in *Hibbs*, 538 U.S. at 739-740, the limits on damages recoverable for violations of Title II "'tend to ensure Congress' means are proportionate to ends legitimate under § 5.'" *Id.* at 739 (internal quotation marks omitted; quoting *Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank*, 527 U.S. 627, 647 (1999)).

Other provisions of the PLRA provide further protection for state interests. The PLRA imposes a number of restrictions on suits brought by inmates, including Title II suits. *See generally Nelson v. Campbell*, 541 U.S. 637, 649 (2004) (describing restrictions the PLRA imposes on inmate litigation); *Crawford-El v. Britton*, 523 U.S. 574, 596 (1998) (same). Of greatest importance here, the PLRA: (1) requires plaintiffs to exhaust available administrative remedies before bringing suit challenging prison conditions and thus provides the State actual notice of the alleged discrimination and an opportunity to resolve the matter internally, *see* 42 U.S.C. § 1997e(a); *Porter v. Nussle*, 534 U.S. 516, 524-532 (2002); (2) requires a district court to screen and dismiss *on its own motion* any prison-conditions suit that "fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief," 42 U.S.C. § 1997e(c); *accord* 28 U.S.C. § 1915A; (3) requires inmates filing *in forma pauperis* to pay the full filing fee (albeit over time), 28 U.S.C. § 1915(b); (4) denies *in forma pauperis* status to any inmate who has on three previous occasions had an action or appeal "dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted," except in cases of

"imminent danger of serious physical injury," *id.* § 1915(g); and (5) limits prospective relief in prison-conditions cases, *see* 18 U.S.C. § 3626; *Miller v. French*, 530 U.S. 327, 347 (2000).

Title II's rights and remedies target conduct that is particularly likely to violate the constitutional rights of inmates with disabilities, while carefully limiting the statute's intrusion on state prerogatives. The statute, especially when taken together with the provisions of the PLRA, readily qualifies as "reasonably prophylactic legislation," *Kimel*, 528 U.S. at 88, in the prison context.

2. The Court Of Appeals Erred In Concluding That Title II Is A Disproportionate Remedy For State Inmates

The court of appeals ruled that Title II represents a disproportionate remedy in the prison context. The court reasoned that Title II cannot be justified as enforcing Eighth Amendment rights because it applies to a range of "prison services, programs, and activities not affected by the Eighth Amendment." *Miller*, 384 F.3d at 1274. The court's determination was doubly erroneous.

First, the court of appeals artificially limited its consideration to applications of Title II that implicate Eighth Amendment rights. But as this brief demonstrates above, pp. 16-19, the fundamental constitutional rights Title II enforces include the requirements of the Equal Protection and Due Process Clauses and various Bill of Rights protections that have been incorporated in the Fourteenth Amendment, as well as the rights guaranteed by the Eighth Amendment's Cruel and Unusual Punishments Clause. When considered in light of the extensive record of state violations of *all* of these rights, Title II's sweep can hardly be said to be excessive.

Second, and more important, the very nature of prophylactic legislation is to prohibit some conduct that does not violate the Constitution; such legislation does so in an effort to ensure that actual constitutional violations do not go undeterred or unremedied. This Court has repeatedly recognized that Congress may enact prophylactic legislation under Section 5: "Congress 'is not confined to the enactment of legislation that merely parrots the precise wording of the Fourteenth Amendment,' and may prohibit 'a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text.'" *Lane*, 541 U.S. at 533 n.24 (quoting *Kimel*, 528 U.S. at 81); *accord City of Boerne*, 521 U.S. at 518. Given the significant constitutional obligations States assume in the treatment of disabled inmates within their custody, and the massive record of violations of those obligations, a statute that reaches conduct that is not in and of itself unconstitutional is plainly congruent and proportional. "Difficult and intractable problems often require powerful remedies," *Kimel*, 528 U.S. at 88, and the history discussed above affords ample justification for applying Title II to prisons, where the State exercises virtually complete control over the lives of inmates.[27]

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[27] Even if the court of appeals were correct in concluding that Congress lacked power to apply Title II to aspects of prison life that (unlike the facts here) may have little connection to the affirmative constitutional obligations the State has to inmates with disabilities, its judgment would still warrant reversal in this case. Congress clearly had a strong Section 5 basis for applying Title II to a significant "class of cases," *cf. Lane*, 541 U.S. at 530-531, arising in the prison setting, *i.e.*, cases (such as this one) in which disabled inmates challenge discrimination (or seek accommodation) relating to basic mobility, sanitary, or medical needs, access to law libraries and religious exercise, protection from harm and abuse, or participation in disciplinary proceedings. Regardless of the existence of any other aspects of prison life that might lack a strong enough connection to the State's affirmative constitutional obligations, in this class of cases, discrimination or denial of accommodation poses a powerful and obvious threat to constitutional rights, and

(Continued on following page)

Furthermore, if Title II is not upheld as valid Section 5 legislation in the prison context, there is a significant prospect that Congress will be powerless to protect inmates with disabilities. If the Court concludes that Congress lacked Section 5 power to apply Title II to the prison context, the statute will provide no basis for *any* relief – damages or an injunction, whether against the State or its officials under *Ex parte Young* – unless the statute can be upheld as an exercise of Congress's commerce power. But respondents argued vigorously in the district court that "the Commerce Clause does not authorize Congress to regulate state correctional facilities under the Americans with Disabilities Act." Dt. Ct. Dkt. 31 at 7. Respondents have never abandoned that contention, which *Miller* specifically left open. *See* 384 F.3d at 1268 n.23. Accordingly, the State's challenge to Title II in this case is one that goes to the basic constitutionality of Title II in the prison context, rather than simply to the statute's abrogation of state sovereign immunity.

II. EVEN IF TITLE II WERE NOT VALID PROPHYLACTIC LEGISLATION IN THE STATE PRISON CONTEXT, THE STATUTE IS VALID REMEDIAL SECTION 5 LEGISLATION AS APPLIED TO CASES WHERE THE STATE ACTUALLY VIOLATED A PLAINTIFF'S CONSTITUTIONAL RIGHTS

Even if the Court does not agree that Title II is valid prophylactic legislation in the prison context, the judgment of the court of appeals must nonetheless be reversed.

The court of appeals concluded that Goodman's allegations – which were supported by evidence submitted

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the minimal extent to which the statute goes beyond the Constitution is more than amply justified by the significant record of constitutional violations by States in similar cases.

in the record below – stated a claim for a violation of the Eighth Amendment's Cruel and Unusual Punishments Clause in three respects. First, the State's confinement of Goodman to a cell in which he could not move his wheelchair imposed "total restraint twenty-three to twenty-four hours-a-day without penal justification." Pet. App. 18a. Second, by "refus[ing] to provide assistance," prison officials forced Goodman "to sit in his own bodily waste." Pet. App. 18a & n.10. Third, the State showed deliberate indifference by "knowingly providing no physical therapy and inadequate medical treatment, systematic denial of access to virtually all prison programs and activities because of his disability, and woefully inadequate and inhumane prison facilities for the disabled, such as toilets without the necessary support or handrails." Pet. App. 18a-19a. Respondents have not challenged in this Court the Eleventh Circuit's conclusion that those allegations, if proven, would establish violations of the Eighth Amendment.

Those facts are the same facts that form the basis for Goodman's Title II claim. Yet the court of appeals concluded that Congress lacked Section 5 power to provide a remedy under Title II for those same facts.

In the view of the court of appeals, Title II cannot be valid under Section 5 as applied to *any* prison conditions case unless it is valid under Section 5 for *all* such cases. *See Miller*, 384 F.3d at 1276 n.34. In so ruling, the court of appeals misread *Lane*. The court began by correctly observing that, "under *Lane*, conduct does not need to be unconstitutional to be validly proscribed by Congress." *Miller*, 384 F.3d at 1276 n.34. *Lane* upheld Title II as applied to an entire class of cases, "without any mention of the ADA violations being *circumscribed* by or *limited* to what would otherwise constitute an actual constitutional violation." *Ibid.* (emphasis added).

From its correct initial observation, however, the court of appeals drew the incorrect conclusion that Section 5 analysis must invariably proceed on a "context by context" basis that does not look to the facts of individual cases. 384 F.3d at 1276 n.34. But Congress's prophylactic power to prohibit conduct that is constitutional does not undermine Congress's remedial power to reach cases in which the defendant's conduct actually violates the Constitution. To the contrary, *Lane* itself makes clear that Title II should be upheld as applied to a case where the statute provides a remedy for a constitutional violation. In *Lane*, 541 U.S. at 531 & n.19, this Court reaffirmed the principle that a statute must be upheld if Congress had power to reach the particular fact setting addressed by the complaint – even if other applications of the statute might exceed congressional power. *Lane* applied that principle to hold that, in determining the Section 5 basis for Title II, the Court need not consider the statute, "with its wide variety of applications, as an undifferentiated whole." *Id.* at 530. Instead, the Court held that it "need go no further" than to conclude that the statute could be upheld in the access-to-courts context of the case before it. *Id.* at 531.

Although *Lane* upheld Title II of the ADA as prophylactic legislation as applied to a "class of cases" that went beyond the facts of the particular case, the Court previously applied the same principle in two cases that considered only whether Congress had remedial power to reach the particular facts before it: *United States v. Raines*, 362 U.S. 17 (1960), and *Griffin v. Breckenridge*, 403 U.S. 88 (1966). In *Raines*, the Court rejected the defendants' constitutional challenge to a provision of the Civil Rights Act of 1957, 42 U.S.C. § 1971(c). The Court did not contest the lower court's conclusion that the statute might, by its terms, reach conduct that was outside of Congress's power to regulate under its Fifteenth Amendment enforcement

power. Instead, in language on which *Lane* specifically relied, the Court held that "if the complaint here called for an application of the statute clearly constitutional under the Fifteenth Amendment, that should have been an end to the question of constitutionality." *Raines*, 362 U.S. at 24-25, *quoted in Lane*, 541 U.S. at 531 n.19. Because the complaint alleged conduct that Congress clearly had the power to reach – race discrimination by state actors – this Court held that the district court should "have gone no further and should have upheld the Act as applied in the present action." *Id.* at 26.

Similarly, in *Griffin*, 403 U.S. at 104, the Court recognized that the broad prohibition of private conspiracies in 42 U.S.C. § 1985(3) might well have applications that went beyond Congress's powers to enforce the Reconstruction Amendments. But it noted that cases like *Raines* had "long since firmly rejected" the "rule that required invalidation of an entire statute if any part of it was unconstitutionally overbroad." *Griffin*, 403 U.S. at 104. Instead, the proper inquiry "need go only to identifying a source of congressional power to reach the private conspiracy alleged by the complaint *in this case*." *Ibid.* (emphasis added). Because Congress clearly had authority under the Thirteenth and Fourteenth Amendments to reach the conduct alleged in the case before it (a private conspiracy to attack an out-of-state vehicle belonging to an African-American who was believed to be a civil rights worker, *see id.* at 89-90), the Court found "no occasion . . . to trace out [the statute's] constitutionally permissible periphery." *Id.* at 107.

This case is in the same posture as that of *Lane*, *Raines*, and *Griffin*. Whatever the outer boundaries of Title II's constitutionally permissible sweep may be, Congress plainly had Section 5 power to apply the statute here, where the defendants' acts violated not just Title II

but also the Constitution itself. This Court emphasized in *City of Boerne* that Section 5 gives Congress power to provide remedies for actual constitutional violations. *See City of Boerne*, 521 U.S. at 519-520; *see also Lane*, 541 U.S. at 558-560 (Scalia, J., dissenting) (Congress has Section 5 power to provide remedies for actual Fourteenth Amendment violations). As applied to the facts alleged in Goodman's complaint, Title II does just that. By abrogating sovereign immunity, it gives Goodman a damages remedy against the State itself for the conduct that violated his constitutional rights. Absent such congressional action, Goodman could not sue the State for such unconstitutional conduct under 42 U.S.C. § 1983. *See* U.S. Const., Amdt. 11; *see also Will v. Michigan Dep't of State Police*, 491 U.S. 58, 64-71 (1989). Instead, if he were to pursue his claims through a Section 1983 suit against the individual state officials who violated his rights, those officials who may be difficult to identify individually, may be judgment-proof, and would in any event be entitled to invoke the doctrine of qualified immunity. *See Anderson v. Creighton*, 483 U.S. 635, 638 (1987).

In short, as applied to the facts of this case Title II does nothing more than provide a remedy for an actual violation of Goodman's constitutional rights. Congress's authority to enforce the Cruel and Unusual Punishments Clause, as incorporated in the Fourteenth Amendment's Due Process Clause, thus plainly constitutes "a source of congressional power to reach the [facts] alleged by the complaint in this case." *Griffin*, 403 U.S. at 104. Even if Title II were not valid prophylactic legislation in the prison context, the court of appeals erred in ruling that the statute could not validly abrogate state sovereign immunity in this case.

The Court must, however, still address the validity of Title II as prophylactic legislation in the prison context. Unless Title II is sustained as valid Section 5 legislation

on that prophylactic ground, Goodman may lack an opportunity to obtain complete relief on his ADA claim because the courts below could conclude that Goodman has not established a violation of his constitutional rights. But if this Court ultimately were to conclude that Title II of the ADA is not valid prophylactic legislation in the prison context, the Court should make clear that Goodman may nonetheless continue to litigate his Title II claims so long as he can establish that the alleged statutory violations also violated his constitutional rights.

CONCLUSION

For the reasons set forth above, the judgment of the court of appeals should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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July 29, 2005